

AMENDED IN ASSEMBLY MAY 15, 2014

AMENDED IN ASSEMBLY APRIL 30, 2014

AMENDED IN ASSEMBLY APRIL 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2330

Introduced by Assembly Member Mullin
(Principal coauthor: Assembly Member Wieckowski)
(Coauthors: Assembly Members Campos, Chávez, Gorell,
Maienschein, and Ting)
(Coauthors: Senators Berryhill, Gaines, and Vidak)

February 21, 2014

An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2330, as amended, Mullin. Income taxes: credits: research activities.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit for a percentage of specified research expenses. These laws, in modified conformity, apply the provisions of the Internal Revenue Code, relating to the election of alternative incremental credit. These laws provide that the provisions of the Internal Revenue Code relating to election of alternative simplified credit shall not apply.

This bill would, *for taxable years beginning on or after January 1, 2015*, not apply the provisions of the Internal Revenue Code, relating to the election of alternative incremental ~~credit~~, ~~and credit~~. *This bill would, for taxable years beginning on or after January 1, 2015, and*

before January 1, 2022, apply the provisions of the Internal Revenue Code, relating to election of alternative simplified credit in modified conformity. This bill conformity, and for taxable years beginning on or after January 1, 2015, would apply the provisions of the Internal Revenue Code, relating to the inclusion of qualified research expenses and gross receipts of an acquired person and aggregation of expenditures. This bill would provide that these changes would apply to taxable years beginning on or after January 1, 2014.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17052.12 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17052.12. For each taxable year beginning on or after January
- 4 1, 1987, there shall be allowed as a credit against the “net tax,”
- 5 defined by Section 17039, for the taxable year an amount
- 6 determined in accordance with Section 41 of the Internal Revenue
- 7 Code, relating to credit for increasing research activities, except
- 8 as follows:
- 9 (a) For each taxable year beginning before January 1, 1997, the
- 10 reference to “20 percent” in Section 41(a)(1) of the Internal
- 11 Revenue Code is modified to read “8 percent.”
- 12 (b) (1) For each taxable year beginning on or after January 1,
- 13 1997, and before January 1, 1999, the reference to “20 percent”
- 14 in Section 41(a)(1) of the Internal Revenue Code is modified to
- 15 read “11 percent.”
- 16 (2) For each taxable year beginning on or after January 1, 1999,
- 17 and before January 1, 2000, the reference to “20 percent” in Section
- 18 41(a)(1) of the Internal Revenue Code is modified to read “12
- 19 percent.”
- 20 (3) For each taxable year beginning on or after January 1, 2000,
- 21 the reference to “20 percent” in Section 41(a)(1) of the Internal
- 22 Revenue Code is modified to read “15 percent.”

1 (c) Section 41(a)(2) of the Internal Revenue Code shall not
2 apply.

3 (d) “Qualified research” shall include only research conducted
4 in California.

5 (e) In the case where the credit allowed under this section
6 exceeds the “net tax,” the excess may be carried over to reduce
7 the “net tax” in the following year, and succeeding years if
8 necessary, until the credit has been exhausted.

9 (f) (1) With respect to any expense paid or incurred after the
10 operative date of Section 6378, Section 41(b)(1) of the Internal
11 Revenue Code, relating to qualified research expenses, is modified
12 to exclude from the definition of “qualified research expense” any
13 amount paid or incurred for tangible personal property that is
14 eligible for the exemption from sales and use taxes, as provided
15 by Section 6378.

16 (2) For each taxable year beginning on or after January 1, 1998,
17 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
18 Internal Revenue Code, relating to contract research expenses, is
19 modified to read “this part or Part 11 (commencing with Section
20 23001).”

21 (g) (1) (A) For each taxable year beginning on or after January
22 1, 2000, and before January 1, ~~2014~~ 2015:

23 (i) The reference to “3 percent” in Section 41(c)(4)(A)(i) of the
24 Internal Revenue Code is modified to read “one and forty-nine
25 hundredths of one percent.”

26 (ii) The reference to “4 percent” in Section 41(c)(4)(A)(ii) of
27 the Internal Revenue Code is modified to read “one and
28 ninety-eight hundredths of one percent.”

29 (iii) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of
30 the Internal Revenue Code is modified to read “two and forty-eight
31 hundredths of one percent.”

32 (B) Section 41(c)(4)(B) of the Internal Revenue Code shall not
33 apply and in lieu thereof an election under Section 41(c)(4)(A) of
34 the Internal Revenue Code may be made for any taxable year of
35 the taxpayer beginning on or after January 1, 1998, and before
36 January 1, ~~2014~~ 2015. That election shall apply to the taxable year
37 for which made and all succeeding taxable years unless revoked
38 with the consent of the Franchise Tax Board.

39 (C) Section 41(h)(2) of the Internal Revenue Code, relating to
40 termination of alternative incremental credit, is modified by

1 substituting “beginning on or after January 1, ~~2014~~ 2015” for
2 “beginning after December 31, 2008”.

3 (2) (A) For taxable years beginning on or after January 1, ~~2014~~,
4 2015, and before January 1, 2022, Section 41(c)(5) of the Internal
5 Revenue Code, relating to election of alternative simplified credit,
6 shall apply, except as otherwise provided.

7 (i) The reference to “14 percent” in Section 41(c)(5)(A) of the
8 Internal Revenue Code is modified to read “10.5 percent”.

9 (ii) The reference to “6 percent” in Section 41(c)(5)(B)(ii) of
10 the Internal Revenue Code is modified to read “4.5 percent”.

11 (B) Section 41(c)(5)(C) of the Internal Revenue Code, relating
12 to election, shall not apply and in lieu thereof an election under
13 Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code
14 may be made for any taxable year of the taxpayer beginning on or
15 after January 1, ~~2014~~ 2015, and before January 1, 2022. That
16 election shall apply to the taxable year for which made and all
17 succeeding taxable years unless revoked with the consent of the
18 Franchise Tax Board.

19 (C) (i) For taxable years beginning on or after January 1, 2022,
20 Section 41(c)(5) of the Internal Revenue Code shall not apply.

21 (ii) No election under Section 41(c)(5) shall apply to taxable
22 years beginning after December 31, 2021.

23 (3) Section 41(c)(7) of the Internal Revenue Code, relating to
24 gross receipts, is modified to take into account only those gross
25 receipts from the sale of property held primarily for sale to
26 customers in the ordinary course of the taxpayer’s trade or business
27 that is delivered or shipped to a purchaser within this state,
28 regardless of f.o.b. point or any other condition of the sale.

29 (h) Except as otherwise provided in this section, Section 41(h)
30 of the Internal Revenue Code, relating to termination, shall not
31 apply.

32 (i) Section 41(g) of the Internal Revenue Code, relating to
33 special rule for passthrough of credit, is modified by each of the
34 following:

35 (1) The last sentence shall not apply.

36 (2) If the amount determined under Section 41(a) of the Internal
37 Revenue Code for any taxable year exceeds the limitation of
38 Section 41(g) of the Internal Revenue Code, that amount may be
39 carried over to other taxable years under the rules of subdivision
40 (e); except that the limitation of Section 41(g) of the Internal

Revenue Code shall be taken into account in each subsequent taxable year.

(j) Section 41(a)(3) of the Internal Revenue Code shall not apply.

(k) Section 41(b)(3)(D) of the Internal Revenue Code, relating to amounts paid to eligible small businesses, universities, and federal laboratories, shall not apply.

(l) Section 41(f)(6) of the Internal Revenue Code, relating to energy research consortium, shall not apply.

(m) ~~The~~ For taxable years beginning on or after January 1, 2015, the amendments made by subdivisions (b) and (c) of Section 301 of the American Taxpayer Relief Act of 2012 (Public Law 112-240), relating to inclusion of qualified research expenses and gross receipts of an acquired person and aggregation of expenditures, shall apply, except as otherwise provided.

~~(n) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2014.~~

SEC. 2. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the “tax,” as defined by Section 23036, an amount determined in accordance with Section 41 of the Internal Revenue Code, relating to credit for increasing research activities, except as follows:

(a) For each taxable year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “8 percent.”

(2) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “12 percent.”

(b) (1) For each taxable year beginning on or after January 1, 1997, and before January 1, 1999, both of the following modifications shall apply:

(A) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “11 percent.”

(B) The reference to “20 percent” in Section 41(a)(2) of the Internal Revenue Code is modified to read “24 percent.”

(2) For each taxable year beginning on or after January 1, 1999, and before January 1, 2000, both of the following shall apply:

1 (A) The reference to “20 percent” in Section 41(a)(1) of the
2 Internal Revenue Code is modified to read “12 percent.”

3 (B) The reference to “20 percent” in Section 41(a)(2) of the
4 Internal Revenue Code is modified to read “24 percent.”

5 (3) For each taxable year beginning on or after January 1, 2000,
6 both of the following shall apply:

7 (A) The reference to “20 percent” in Section 41(a)(1) of the
8 Internal Revenue Code is modified to read “15 percent.”

9 (B) The reference to “20 percent” in Section 41(a)(2) of the
10 Internal Revenue Code is modified to read “24 percent.”

11 (c) (1) With respect to any expense paid or incurred after the
12 operative date of Section 6378, Section 41(b)(1) of the Internal
13 Revenue Code, relating to qualified research expenses, is modified
14 to exclude from the definition of “qualified research expense” any
15 amount paid or incurred for tangible personal property that is
16 eligible for the exemption from sales and use taxes, as provided
17 by Section 6378.

18 (2) “Qualified research” and “basic research” shall include only
19 research conducted in California.

20 (d) The provisions of Section 41(e)(7)(A) of the Internal
21 Revenue Code, relating to basic research, shall be modified so that
22 “basic research,” for purposes of this section, includes any basic
23 or applied research including scientific inquiry or original
24 investigation for the advancement of scientific or engineering
25 knowledge or the improved effectiveness of commercial products,
26 except that the term does not include any of the following:

27 (1) Basic research conducted outside California.

28 (2) Basic research in the social sciences, arts, or humanities.

29 (3) Basic research for the purpose of improving a commercial
30 product if the improvements relate to style, taste, cosmetic, or
31 seasonal design factors.

32 (4) Any expenditure paid or incurred for the purpose of
33 ascertaining the existence, location, extent, or quality of any deposit
34 of ore or other mineral (including oil and gas).

35 (e) (1) In the case of a taxpayer engaged in any
36 biopharmaceutical research activities that are described in codes
37 2833 to 2836, inclusive, or any research activities that are described
38 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
39 Industrial Classification (SIC) Manual published by the United
40 States Office of Management and Budget, 1987 edition, or any

1 other biotechnology research and development activities, the
2 provisions of Section 41(e)(6) of the Internal Revenue Code,
3 relating to qualified organizations, shall be modified to include
4 both of the following:

5 (A) A qualified organization as described in Section
6 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
7 institution of higher education as described in Section 3304(f) of
8 the Internal Revenue Code, relating to definition of institution of
9 higher education.

10 (B) A charitable research hospital owned by an organization
11 that is described in Section 501(c)(3) of the Internal Revenue Code,
12 is exempt from taxation under Section 501(a) of the Internal
13 Revenue Code, relating to exemption from taxation, is not a private
14 foundation, is designated a “specialized laboratory cancer center,”
15 and has received Clinical Cancer Research Center status from the
16 National Cancer Institute.

17 (2) For purposes of this subdivision:

18 (A) “Biopharmaceutical research activities” means those
19 activities that use organisms or materials derived from organisms,
20 and their cellular, subcellular, or molecular components, in order
21 to provide pharmaceutical products for human or animal
22 therapeutics and diagnostics. Biopharmaceutical activities make
23 use of living organisms to make commercial products, as opposed
24 to pharmaceutical activities that make use of chemical compounds
25 to produce commercial products.

26 (B) “Other biotechnology research and development activities”
27 means research and development activities consisting of the
28 application of recombinant DNA technology to produce
29 commercial products, as well as research and development
30 activities regarding pharmaceutical delivery systems designed to
31 provide a measure of control over the rate, duration, and site of
32 pharmaceutical delivery.

33 (f) In the case where the credit allowed by this section exceeds
34 the “tax,” the excess may be carried over to reduce the “tax” in
35 the following year, and succeeding years if necessary, until the
36 credit has been exhausted.

37 (g) For each taxable year beginning on or after January 1, 1998,
38 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
39 Internal Revenue Code, relating to contract research expenses, is

1 modified to read “this part or Part 10 (commencing with Section
2 17001).”

3 (h) (1) (A) For each taxable year beginning on or after January
4 1, 2000, and before January 1, ~~2014~~ 2015:

5 (i) The reference to “3 percent” in Section 41(c)(4)(A)(i) of the
6 Internal Revenue Code is modified to read “one and forty-nine
7 hundredths of one percent.”

8 (ii) The reference to “4 percent” in Section 41(c)(4)(A)(ii) of
9 the Internal Revenue Code is modified to read “one and
10 ninety-eight hundredths of one percent.”

11 (iii) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of
12 the Internal Revenue Code is modified to read “two and forty-eight
13 hundredths of one percent.”

14 (B) Section 41(c)(4)(B) of the Internal Revenue Code shall not
15 apply and in lieu thereof an election under Section 41(c)(4)(A) of
16 the Internal Revenue Code may be made for any taxable year of
17 the taxpayer beginning on or after January 1, 1998, and before
18 January 1, ~~2014~~ 2015. That election shall apply to the taxable year
19 for which made and all succeeding taxable years unless revoked
20 with the consent of the Franchise Tax Board.

21 (C) Section 41(h)(2) of the Internal Revenue Code, relating to
22 termination of alternative incremental credit, is modified by
23 substituting “beginning on or after January 1, ~~2014~~,” 2015” for
24 “beginning after December 31, 2008”.

25 (2) (A) For taxable years beginning on or after January 1, ~~2014~~,
26 2015, and before January 1, 2022, Section 41(c)(5) of the Internal
27 Revenue Code, relating to election of alternative simplified credit,
28 shall apply, except as otherwise provided.

29 (i) The reference to “14 percent” in Section 41(c)(5)(A) of the
30 Internal Revenue Code is modified to read “10.5 percent”.

31 (ii) The reference to “6 percent” in Section 41(c)(5)(B)(ii) of
32 the Internal Revenue Code is modified to read “4.5 percent”.

33 (B) Section 41(c)(5)(C) of the Internal Revenue Code, relating
34 to election, shall not apply and in lieu thereof an election under
35 Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code
36 may be made for any taxable year of the taxpayer beginning on or
37 after January 1, ~~2014~~ 2015, and before January 1, 2022. That
38 election shall apply to the taxable year for which made and all
39 succeeding taxable years unless revoked with the consent of the
40 Franchise Tax Board.

1 (C) (i) *For taxable years beginning on or after January 1, 2022,*
2 *Section 41(c)(5) of the Internal Revenue Code shall not apply.*

3 (ii) *No election under Section 41(c)(5) shall apply to taxable*
4 *years beginning after December 31, 2021.*

5 (3) Section 41(c)(7) of the Internal Revenue Code, relating to
6 gross receipts, is modified to take into account only those gross
7 receipts from the sale of property held primarily for sale to
8 customers in the ordinary course of the taxpayer's trade or business
9 that is delivered or shipped to a purchaser within this state,
10 regardless of f.o.b. point or any other condition of the sale.

11 (i) Except as otherwise provided in this section, Section 41(h)
12 of the Internal Revenue Code, relating to termination, shall not
13 apply.

14 (j) Section 41(g) of the Internal Revenue Code, relating to
15 special rule for passthrough of credit, is modified by each of the
16 following:

17 (1) The last sentence shall not apply.

18 (2) If the amount determined under Section 41(a) of the Internal
19 Revenue Code for any taxable year exceeds the limitation of
20 Section 41(g) of the Internal Revenue Code, that amount may be
21 carried over to other taxable years under the rules of subdivision
22 (f), except that the limitation of Section 41(g) of the Internal
23 Revenue Code shall be taken into account in each subsequent
24 taxable year.

25 (k) Section 41(a)(3) of the Internal Revenue Code shall not
26 apply.

27 (l) Section 41(b)(3)(D) of the Internal Revenue Code, relating
28 to amounts paid to eligible small businesses, universities, and
29 federal laboratories, shall not apply.

30 (m) Section 41(f)(6) of the Internal Revenue Code, relating to
31 energy research consortium, shall not apply.

32 (n) ~~The~~ *For taxable years beginning on or after January 1,*
33 *2015, the amendments made by subdivisions (b) and (c) of Section*
34 *301 of the American Taxpayer Relief Act of 2012 (Public Law*
35 *112-240), relating to inclusion of qualified research expenses and*
36 *gross receipts of an acquired person and aggregation of*
37 *expenditures, shall apply, except as otherwise provided.*

38 ~~(o) The amendments made to this section by the act adding this~~
39 ~~subdivision shall apply to taxable years beginning on or after~~
40 ~~January 1, 2014.~~

- 1 SEC. 3. This act provides for a tax levy within the meaning of
- 2 Article IV of the Constitution and shall go into immediate effect.

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